IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

MFA.No. 718 of 1999()

OPMV.2314/1996 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, TIRUR.

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APPELLANT: PETITIONER:

KHADEEJA, AGED 45 YEARS, W/O.MOHAMMED SADIQUE,
ADUKATTIL HOUSE, PANAMBI, P.O.,
AMMINIKAD, VIA. PERINTHALMANNA.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS: RESPONDENTS:

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* 1. ABDUL MAJEED, S/O.MOHAMMED HAJI,
PILAKKAL HOUSE, PACHEERI, MANNARMALA,
PATTIKKAD, MALAPPURAM, (DRIVER OF THE
JEEP BEARING NO.KL 10/C 2121)

* 2. P. MOHAMMEDALI, S/O.MOHAMMED KAKKODATH,
PALLIYALIL HOUSE, MAROTH MANGALAM,
PALAKKAD, (OWNER OF THE VEHICLE BEARING NO.
KL 10/C 2121 JEEP)

(NAME OF RESPONDENTS 1 & 2 ARE DELETED FROM THE PARTY ARRAY AT THE RISK OF THE PETITIONER, AS PER ORDER DT. 20.3.2006 IN I.A.No.586/06.)

3. NATIONAL INSURANCE CO. LTD., REP. BY
DIVISIONAL MANAGER, DIVISIONAL OFFICER, CALICUT.
(INSURER OF JEEP BEARING NO.KL/10 C 2121)

BY ADV. SRI.JOHN KOSHY

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No. 718 of 1999

Dated this the 6th June, 2007.

J U D G M E N T

The claimant in O.P.(M.V.) No.2314 of 1996, on the file of the Motor Accidents Claims Tribunal, Tirur, is the appellant herein. The appellant was a passenger in a motor car, bearing registration No.KL 10B/1544. The car was proceeding from Vengara to Perinthalmanna. When it reached at Panakkad, it collided with a jeep bearing registration No.KL 10 C/2121, in which, the appellant sustained injuries. She filed the Original Petition claiming an amount of Rs.60,000/= as compensation. In that petition, the owner, driver and insurer of the jeep alone were imp leaded. Tribunal found the petition was bad for non-joinder of necessary parties, since the appellant failed to implead the driver, owner and insurer of the motor car, in which she was travelling. It was also found that the accident occurred due to the negligence of both the vehicles. The Tribunal, after considering all the materials on record, held that appellant was entitled to an amount of Rs.30,150/= as compensation, but further

held that since the accident occurred due to the negligence of both drivers, claimant/appellant is only entitled to get one-half of the compensation. Challenging that award, this appeal is filed.

2. The definite case put forward by the appellant was that the accident occurred due to the negligence of the first respondent, driver of the jeep. It is true that she was travelling in an another car. But she never admitted that the accident occurred due to the negligence of both drivers. So, there was no necessity to implead the owner, driver and insurer of the car, in which she was travelling. The finding of the Tribunal that the petition itself was bad for non-joinder of parties is illegal and unsustainable. Therefore, I hold that the petition is not bad for non-joinder of necessary parties.

3. Equally unsustainable is the finding regarding the contributory negligence. The owner and driver remained ex parte. Insurer alone contested the matter. Though insurer raised a contention that the accident occurred due to the negligence of both drivers, it did not adduce any evidence. Claimant/appellant alone was examined as PW.1. The Tribunal held that appellant did not examine any witnesses from the spot of accident, to rebut the contentions of

the first respondent. The above reasoning of the Tribunal is illegal. Appellant sustained injuries in the accident. Further, the owner and driver did not appear and contest the matter. It was the 3rd respondent, insurer, who raised such a contention. The insurer did not examine any eye witness to the accident. The Tribunal held that Ext.A2 scene mahazar prepared in this case would show that the road at which the accident occurred, was having sufficient width for passing two heavy motor vehicles. Therefore, the Tribunal jumped into the conclusion that the drivers of both vehicles could have avoided the accident, had they been cautious. That reasoning of the Tribunal is illegal. The evidence of PW.1 clearly establishes that the accident occurred due to the negligence of the driver of the jeep alone. Hence, the finding of the Tribunal on that aspect is illegal, and, therefore, set aside.

4. The Tribunal found that the appellant is entitled to a compensation of Rs.30,150/=. But one-half of the amount only was awarded, on the ground that she will have to realise the balance award amount from the owner, driver and insurer of the car. In view of my finding, the entire compensation is to be paid by respondents 1 to 3, the owner, driver and insurer of the jeep. Since the offending vehicle

was covered under a valid policy of insurance, the entire amount is to be paid by the 3rd respondent, insurer. I have gone through the evidence. The quantum of compensation awarded is reasonable and does not call for any interference. I confirm the finding on that point.

5. In the result, appeal is allowed in part. The appellant is entitled for realisation of balance award amount of Rs.15,075/=, with interest at the rate of 7%, from the date of petition till the date of realisation, from the 3rd respondent, Insurer. The decree passed against the driver, owner and insurer of the car bearing Registration No.KL 10B/1544 is hereby set aside.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No.718 of 1999

J U D G M E N T

Dated: 6th June, 2007.